



REPUBLIC OF KENYA



**KENYA LAW**  
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**County Government of Nandi v Morong & another (Environment & Land  
Case E015 of 2024) [2025] KEELC 5007 (KLR) (2 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5007 (KLR)

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KAPSABET**

**ENVIRONMENT & LAND CASE E015 OF 2024**

**CK NZILI, J**

**JULY 2, 2025**

**BETWEEN**

**COUNTY GOVERNMENT OF NANDI ..... PLAINTIFF**

**AND**

**DORICE RONO MORONG ..... 1<sup>ST</sup> DEFENDANT**

**LAND REGISTRAR NANDI COUNTY ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. The plaintiff came to court through a plaint dated 12/7/2024. It seeks:
  - a. Declaration that it is a purchaser for value of Land Parcel No. Nandi/Ndurio/1303.
  - b. An order directing the 1<sup>st</sup> defendant to perform her part of the contract by attending the Land Control Board for a consent to transfer the purchased land and to execute the necessary transfer documents, in the alternative, the Deputy Registrar of the court to execute them.
  - (c) An order directing the 2<sup>nd</sup> defendant to effect the order of the court by registering the plaintiff as the proprietor of the land and to issue a title to that effect.
2. Briefly, the plaintiff averred that it bought 1.0 acres of the suit land registered in favour of the 1<sup>st</sup> defendant by a sale agreement dated 31/7/2023 for Kshs.1,000,000/=, which it paid on 1/8/2023 to the 1<sup>st</sup> defendant's account held at Equity Bank Ltd.
3. The plaintiff averred that after signing the agreement, the 1<sup>st</sup> defendant disclosed that there was a pending boundary dispute with a neighbour lodged at the land registry and requested for time to settle it before the transfer could be effected. It is averred that the 2<sup>nd</sup> defendant visited the suit land and established that there was no encroachment there on, otherwise, the 1<sup>st</sup> defendant was unjustifiably denying, ignoring, neglecting or refusing to effect the transfer of the purchased land despite receiving and acknowledging receipt of the purchase price.



4. Equally, the plaintiff averred that though it has taken possession of and put up a fully-fledged dispensary building, awaiting operationalization to serve the residents of Ndurio Ward-Nandi County, the 1<sup>st</sup> defendant is reneging on her obligation hence, the suit.
5. The 1<sup>st</sup> defendant opposed the suit by a statement of defence dated 2/10/2024. The 1<sup>st</sup> defendant denied that plaintiff is a purchaser for value of the suit property as alleged or at all, and or is deserving of the reliefs sought. The 1<sup>st</sup> defendant denied knowledge or disclosure of any boundary dispute involving the suit property or allegedly requesting for time to have it settled, as alleged or at all. The 1<sup>st</sup> defendant also denied the alleged neglect to transfer the suit property or unsuccessfully engaging the plaintiff with a view of concluding the alleged transfer. Further, the 1<sup>st</sup> defendant denied the alleged taking of possession of the suit property and or putting up of a dispensary therein while awaiting operationalization.
6. On the contrary, the 1<sup>st</sup> defendant contended that the sale agreement dated 31/7/2023 was void ab initio, untenable and incapable of enforcement in a court of law, for contravening Articles 60 and 202 of *the Constitution*, the provisions of the Public Service Management Act, the Public Procurement and Assets Disposal Act, 2015 and the land laws.
7. Therefore the 1<sup>st</sup> defendant averred that due to the flawed procedure undertaken in the purchase of the land, the transaction is legally untenable and was likely to attract significant audit queries and inspection of the Ethics and Anti-Corruption Commission, otherwise she distances herself from the sale agreement or any further involvement in it. The 1<sup>st</sup> defendant asserted that her legitimately acquired property should not serve as a channel for the mismanagement of public finances and resources, given that the purported development on the suit property was likely to become an unutilized asset more so when there were no approved buildings plans signed by her in her capacity as the registered owner, for the alleged construction on the land.
8. The record of the court shows that the 1<sup>st</sup> defendant entered an appearance on 2/10/2024 and filed a statement of defence. She has subsequently approached this court through an application dated 11/6/2025 seeking:
  - (1) Striking out of the plaint dated 12/7/2024.
  - (2) Interim order of injunction stopping the plaintiff's entry into the suit property, erecting any structures therein, including the dispensary until the suit is heard and determined.
  - (3) Declaration that the agreement dated 31/7/2023 is a nullity for non-compliance with the Public Procurement and Assets Disposal Act, 2015, the *Public finance Management Act*, the *Land Act* and the *Land Registration Act*.
9. The reasons are contained on the face of the application and in a supporting affidavit of Dorice Ronoh Morong, sworn on 11/6/2025. It is deposed that though she signed the sale agreement and received the consideration, she is not opposed to refund the money, receiving, taking back possession of the land, until the unlawful actions of the plaintiff are addressed by the court. The 1<sup>st</sup> defendant deposed that at the time of entering into the agreements, she relied on her advocates advise, who assured her that the transaction was lawful and could safely proceed with it.
10. Further, the applicant averred that before transferring the suit property, she sought a second opinion where she was told that there was no competitive procurement process, or budgetary allocation for the transaction in the financial year 2023/2024, no valuation report was obtained from a government valuer to determine the purchase price, there was no public participation conducted, a land control



board consent was not sought, and obtained and lastly, the National Land Commission was not involved in initiating or overseeing the transaction..

11. Again, the applicant deposed that the plaintiff proceeded to construct the Enego Dispensary on the suit property without her consent or without approved building plans as per photos marked DRM-2. The applicant termed the construction as unauthorized and an act of trespass. Again, the applicant deposed that due to the foregoing, the local community has turned against her and her family, causing them significant social distress, and frustration, for they are seen as obstructing a public project.
12. The application is opposed through a replying affidavit sworn by Fred Kiptum on 21/6/2025. It is deposed that the applicant willingly and voluntarily entered into the sale agreement, and was paid an agreed consideration and reminded severally to perform her part of the bargain as per annexure marked FK-1. The respondent deposed that the construction of the health facility on the suit property was undertaken before devolution, funded by National Government Constituencies Development Fund Aldai Constituency, hence public resources have already been expended on the project.
13. The respondent deposed that the father of the applicant, Richard K. A. Sang, had severally been paid through Constituency Development Fund for the sale of the suit property but instead of transferring it to the plaintiff after devolution, he transferred it to the applicant, with the sole intents to re-negotiate the price, which property has been used as a long standing 'cash cow' for the family, hence the reason for evading the completion of the agreement.
14. Further, the respondent deposed that the applicant was being insincere as the suit property was developed long ago and a re-fencing was done, as a routine maintenance of the facility as required, to ensure where health facilities are offered, it was environmentally and security wise sound and safe for the users and the human resources therein. The respondent deposed that the suit property has long-standing improvements with a fully operational dispensary and has reduced the long distance the residents were travelling to look for medical facilities as per the attached photos marked FK-3.
15. According to the respondent, the cause of action is based on breach of the sale agreement by not transferring the land, hence specific performance prayer, otherwise the alleged legal advice is misconceived. The respondent deposed that the alleged matters relating to procurement do not fall within the jurisdiction of this court in terms of Section 27 of the Public Procurement & Assets Disposal Act, 2015, Section 13 of the *Environment and Land Court Act* and Article 165(6) of *the Constitution*.
16. Additionally, the respondent deposed that the application has not met the threshold for the grant of temporary injunction, otherwise such orders can only be determined and granted after the matter is heard and determined in merits.
17. The applicant relied on written submissions dated 19/6/2025. It is submitted that the suit seeks to enforce a void and unenforceable and legally defective sale agreement for non-compliance with the stated laws in the statement of defence and further on alleged illegal constructions on the suit property that she did not approve, consent to and or authorize.
18. The applicant invoked Article 159(b) of *the Constitution*, Sections 1A and B of the *Civil Procedure Act*, Order 2 Rule 15(1) (a) of the Civil Procedure Rules, Section 6 of the *Land Control Act*, Section 43 of the Public Procurement & Assets Disposal Act and Section 68 of the *Public Finance Management Act* 2012, and submitted that the suit does not disclose a known cause of action, since as alluded above, the sale agreement sought to be enforced is illegal, void and null ab initio and against public policy. She relied on *Mapis Investment (K) Ltd v Kenya Railways Corporation* [2005] eKLR and *Trust Bank Ltd v H.S. Amin & Co. Ltd & Another* [2000] eKLR.



19. Accordingly, the applicant submitted that the plaint is scandalous, frivolous and vexatious under Order 2 Rule 15(1)(b) of the Civil Procedure Rules, for it seeks to enforce an illegal contract violating multiple statutes, which is within the knowledge of the respondent, who is out to harass and cause unnecessary expenses, social distress and community hostility to the her. Reliance is placed on *Trust Bank Ltd v H.S. Amin & Co. Ltd & Another* [2000] eKLR,
20. Again, the applicant submitted that the respondent is out to prejudice, embarrass and delay fair trial, since it is seeking to enforce an unenforceable sale agreement from her, based on a baseless claim. In this case the applicant submitted that the suit seeks to impose financial burden on her to litigate a void claim, delay justice by clogging judicial resources with a meritless suit and lastly, risks setting a precedent that undermines statutory safeguards for public transactions.
21. The applicant submitted that the plaint is an abuse of the court process, for it is misusing the court machinery contrary to Order 2 Rule 15(1)(d) of the Civil Procedure Rules as held in *Madison Insurance Co. Ltd v Augustine Kamanda Gitau* [2020] eKLR.
22. The respondent relied on written submission dated 21/6/2025, isolating four issues for determination:
  - (a) Whether the suit should be dismissed for want of a cause of action.
  - (b) Whether injunctive orders can be granted.
  - (c) Whether the agreement dated 31/7/2023 is valid.
  - (d) What is the order as to costs.
23. The respondent submitted that the discretion under Order 2 Rule 15 of the Civil Procedure Rules to strike out a suit for lack of a cause of action ought to be exercised cautiously, not to lock out a litigant from accessing justice as held in *D.T. Dobie & Co. (K) Ltd v Joseph Mbaria Muchina & Another* [1980 eKLR and *Wenlock v Moloney* [1965] 1 WLR 1238. In this case, the respondent submitted that the cause of action relates to a breach of a sale agreement and a prayer for specific performance. Whereas the 1<sup>st</sup> defendant attacks the sale agreement for non-compliance with public procurement laws, the respondent submitted that such issues fall under the jurisdiction of the Public Procurement Administrative Review Board (PPARB), under Section 27 of the Public Procurement and Assets Disposal Act, 2015, and subsequently to the High Court, under Article 165(6) of *the Constitution*, hence the application for striking out of the suit is far-fetched, misplaced and misguided.
24. On injunctive orders, the respondent submitted that the application is self-defeating for the certificate of urgency acknowledges that a dispensary and a perimeter fence are already complete, which according to the respondent occurred before devolution came in. Therefore, the respondent submitted that the applicant has not met the requirements of the grant of temporary injunction as set in *Nguruman Ltd v Jan Bonde Nielsen & Others* [2014] eKLR, and *Mrao Ltd v First American Bank of (K) Ltd & Others* [2003] KLR 125.
25. Subsequently, the respondent submitted that the orders sought will injure the residents of Enego Area, the users of the dispensary and if the applicant in the unlikely event, succeeds in the suit, she can still be compensated by way of damages, based on the consideration that she was paid by the County. The plaintiff submits that the balance of convenience tilts in favour of the plaintiff and the people of Enego area who stand to suffer more. Reliance is placed on *Pius K. Kogo v Frank Kimeli Tenai* [2018] eKLR.
26. As to whether the sale agreement is void, the respondent submitted that Section 6 of the County Government Act enables it to acquire land, while Section 9(c) (iii) of the *Land Act* allows for the conversion of private land into public land by way of transfer and only after that, can the National



- Land Commission become the manager and an administrator, unless the acquisition was through compulsory acquisition .
27. The respondent submitted that the prayers sought by the applicant can only issue after the full hearing. Reliance is placed on *Muslim For Human Rights (MuHuRi) & Others v Attorney General & Others* [2011] eKLR, *Madison Insurance Co. Ltd v Augustine Kamanda Gitau* (supra) and *Republic v Public Procurement Administrative Review Board & Others Ex-parte Numerical Machining Complex Ltd* [2016] eKLR, on the need to uphold procurement laws to prevent abuse of public resources.
28. The issues calling for my determination are:
1. If the court has jurisdiction to hear and determine issues on public procurement, public participation and whether there was need for public participation, a valuation report and budgetary allocation before entry into the sale of the suit property.
  2. If the suit brought by the plaintiff to enforce the sale agreement is against the public policy, should be struck out on account of disclosing no cause of action, is scandalous, frivolous, vexatious, prejudicial, embarrassing, delaying fair trial and an abuse of the court process.
  3. If the 1<sup>st</sup> defendant deserves interim orders of injunction.
29. Jurisdiction is the authority which a court or tribunal has to entertain, hear, determine and decide on matters, or issues brought before it. The authority is imposed by either a statute or *the Constitution*. Without it a court has to down its tools as held in *Owners of Motor Vessel Lillian “S” v Caltex Oil (K) Ltd* [1989] KLR 1. The plaintiff’s suit is based on a breach of a sale agreement dated 31/7/2023 between the 1<sup>st</sup> defendant. Whereas the 1<sup>st</sup> defendant does not deny execution of the sale agreement, receiving the purchase price, and allowing the plaintiff to take possession of the suit property, she terms the sale agreement as undertaking contrary to the public procurement and public finance and management laws. She terms the sale agreement as void, illegal, and a nullity ab initio, hence incapable of being enforced by this court.
30. Further, the applicant has asked the court to strike out the suit for disclosing no known cause of action and for offending the principles under Order 2 Rule 15 of the Civil Procedure Rules. It is the respondent’s contention before this court that matters related to public procurement and public finance and management are improperly invoked to vitiate the sale agreement for the court is divested of jurisdiction which falls under the PPARB and the High Court.
31. A land contract has to comply with Section 3(3) of the *Law of Contract Act* and Section 38 of the *Land Act*. Courts do not rewrite contracts but enforce them unless, there is evidence that the contract is illegal, void, voidable, unconscionable or procured through misrepresentation or undue influence. See *National Bank of Kenya Ltd v Pipe Plastic Samkolik (K) Ltd & Another* [2001] eKLR.
32. A contract that convenes a statute may be illegal, void ab initio and unenforceable as held in *D. Njogu & Co. Advocates v National Bank of Kenya Ltd* [2016] eKLR and *David Taylor & Son v Barnett Trading Co.* [1953 1WAR. It is not the business of courts to assist parties to walk out from what they have bargained for since there is privilege to contract. A party in a court of equity is not entitled to a relief based on an illegality of his own conduct. He must proof something more than either there was pressure or undue influence over and above the contract being illegal as held in *Nathalal Raghavji Lakhani v H.J. Vaitha & Another* [1965] EA 452. See also *D. Njogu & Co. Advocates v National Bank of Kenya Ltd* (supra).
33. In *Standard Chartered Bank vs Pakistan National Shipping Corp. No. (20)* [2000], the court held that the policy of the law is to protect the public from deceit and to maintain standards of commercial



morality. A party ought not to benefit from intentional and own made illegalities. A contract may also be severable as held in Independent Electoral and Boundaries Commission (IEBC) v National Super Alliance(NASA) Kenya & 6 others [2017] eKLR, and in Trans Mara Sugar Co Ltd & another v Ben Kangwaya Ayiimba & another [2020] KEHC 3762 (KLR).

34. In this suit, the submissions of the plaintiff is that if the 1<sup>st</sup> defendant wants to attack the sale agreement based on illegality or being against statutes, the first port of call is the PPARB and later the High Court and not this court. I disagree with that reasoning. The issues on whether the sale agreement is illegal or not falls squarely on this court. In Suzanne Achieng Butler & Others v Redhill Heights Investment Ltd & Another [2016] eKLR, the court warned that the court should not approach jurisdiction in an ultra-technocratic fashion but in a functional manner, by looking at the constitutional objectives. The predominant issue pleaded by the 1<sup>st</sup> defendant is whether or not the sale agreement offends the statutes governing acquisition of land by the plaintiff. I find the court has jurisdiction to hear and determine the issue of whether the sale agreement offends statutes and public policy on the procurement and disposal of assets by the plaintiff.
35. A cause of action as per Black Laws Dictionary 9<sup>th</sup> Edition page 251 refers to a group of facts giving rise to the or basis of suing, or a factual situation that entitles a person to obtain a remedy in a court from another person. It also refers to a primary right of the plaintiff that has actually been violated by the defendant.
36. The 1<sup>st</sup> defendant in this application seeks striking out of the suit for not disclosing a known cause of action against her since the sale agreement is illegal, null and void ab initio and hence unenforceable in law and that it offend the grounds set under Order 2 Rule 15 of the Civil Procedure Rules. In the statement of defence dated 2/10/2024, the 1<sup>st</sup> defendant did not plead that the suit discloses no known cause of action and or that the suit offends Order 2 Rule 15 of the Civil Procedure Rules. Parties are bound by their pleadings and issues for the courts determination flow from those pleadings as held in Raila Amolo Odinga & another v Independent Electoral and Boundaries Commission & 2 others [2017] eKLR.
37. In D.T. Dobie v Machina (supra), the court held that it must be very cautious, careful and consider all the facts of the case, when called upon to strike out a suit for lack of a reasonable cause of action, or otherwise as an abuse of the court process, at an interlocutory stage. The 1<sup>st</sup> defendant has admitted entry into the sale agreement, receipt of the consideration, handing over vacant possession, knowledge of entry into, developments onto and the completion of the projects servicing the community by the plaintiff on the suit property. The 1<sup>st</sup> defendant did not plead that she was willing to refund the consideration in the body of the statement of the defence dated 2/10/2024. The 1<sup>st</sup> defendant has not offered to surrender the consideration before the court as condition precedent to being granted equitable reliefs. There is no evidence that the 1<sup>st</sup> defendant, sought to terminate, rescind and or vary the sale agreement on account of illegality, for being contrary to public policy and or for lack of valuation report to determine the exact value of the suit land before the transfer.
38. In Crescent Construction Co Ltd v Delphis Bank Ltd 2007 eKLR, the court said that striking out pleadings is a draconian action which may have the consequences of slamming the doors of justice on the face of one party without according it an opportunity to be heard. It is the acts of the 1<sup>st</sup> defendant which have forced the plaintiff to move to court for specific performance. If the 1<sup>st</sup> defendant has an arguable defence to the breach of or impossibility to perform her part of the bargain then, the 1<sup>st</sup> defendant should not shy away from ventilating her defence at the main hearing.
39. There is admission of entry into the sale agreement, which the 1<sup>st</sup> defendant has breached by failing to transfer the suit land. The suit cannot be termed as a non-starter, an abuse of the court process,



frivolous, vexatious and embarrassing. It is the 1<sup>st</sup> defendant who partook of the consideration, and allowed the plaintiff to take vacant possession. The plaintiff has therefore a right to obtain ownership documents through the process of land transfer.

40. A reasonable cause of action is one that must not succeed in the trial. As long as it has a chance of success, it is upto the plaintiff to prove it at the trial. The plaintiff has disclosed all the facts in support of the cause of action as well as the documents that the 1<sup>st</sup> defendant signed on 31/7/2023. See Kwame Kariuki & Another v Hassconsult Ltd & Others [2014] eKLR. The upshot is that I find no basis to strike out the suit. See Olympic Escort International Co. Ltd & Others v Parminder Singh Sandhu & Another [2009] eKLR.
41. As to the prayer for temporary injunction, the 1<sup>st</sup> defendant admits that the sale agreement dated 31/7/2023 was consummated and substantially performed by the plaintiff to the extent that she obtained her consideration on 1/7/2023, the plaintiff took vacant possession and has expended public funds to develop the suit premises. The 1<sup>st</sup> defendant admits that there are permanent developments or structures on the suit premises which she have been aware of till the filing of this suit.
42. The 1<sup>st</sup> defendant has not preferred any counterclaim where she seeks substantive orders from this court. The 1<sup>st</sup> defendant admits holding Kshs.1,000,000/= from the plaintiff. The 1<sup>st</sup> defendant has not pleaded that the plaintiff breached any of the terms and conditions of the sale agreement or that the sale has been frustrated and rescinded. Section 38 of the *Land Act* deals with validity of contracts in sale of land. Section 40 thereof provides that a vendor can claim damages and mesne profits from the purchaser. Section 41 thereof provides for the procedure for reclaiming possession of private land. Section 42 thereof provides for the reliefs against a rescinded contract. Section 43 and 44 thereof relate to transfers. There is no evidence that the 1<sup>st</sup> defendant had taken up any of the options alluded to above, before the filing of this application.
43. Evidence of breach of any of the 1<sup>st</sup> defendant's rights by the plaintiff based on the material before this court has not been availed. Any loss or damage that the 1<sup>st</sup> defendant has suffered has not been established through tangible and cogent evidence. Speculative loss, damage or injury is not enough. The respondent stands to suffer more and the residents of Enego village, if the court were to issue a temporary injunction which the applicant apparently seeks in the nature of mandatory or prohibitory injunction, to regain vacant possession. The applicant has not demonstrated exceptional circumstances to be granted such a relief before the matter is heard on merits.
44. The upshot is I find the application dated 11/6/2025 lacking merits. It is dismissed with costs to the plaintiff.
45. Orders accordingly.

**RULING DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 2<sup>ND</sup> DAY OF JULY 2025.**

In the presence of:

Court Assistant - Dennis

Kogo for the Plaintiff/respondent present

Sifuna for the 1<sup>st</sup> defendant/applicant present

2<sup>nd</sup> defendant absent

**HON. C.K. NZILI**



**JUDGE, ELC KITALE.**

